IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

Cr. Appeal No.531 of 2000

Date of Decision : 12.11.2007

State of H.P. …Appellant.

Versus:

Rumail Singh …Respondent.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *No.*

For the appellant: Mr. Virrender Kumar Verma, Addl. Advocate General.

For the respondent : Mr.Chandernarayan Singh, Advocate.

Sanjay Karol, J. (Oral).

The present appeal arises out of judgement dated 5.5.1999 passed by the Chief Judicial Magistrate, Sirmaur District at Nahan (H.P) in criminal case No. 78/3 of 1996, titled as State of H.P. vs. Rumail Singh, acquitting the accused of the charged offence.

As per the case of the prosecution, SHO, Inspector-Prem Chand, Police Station Sadar, Nahan during the course of the investigation on 6.11.1995 received a secret information that

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

one truck bearing No. HIN 502 was carrying illicit liquor. Based on the said information, he formed a raiding party consisting of H.C.Kalyan Singh PW-1, constable Krishan Chand, constable Mohinder Singh and constable Ranjit Singh and set up a Nakabandi at Police Post Kala Amb, District Una, H.P.. The independent witness Yashpal (PW-2) was asked to be part of the raiding party . On the said date at about 5 P.M. truck bearing No. HIN 502 driven by the accused reached the place where the raidig party had set up the 'Nakabandi' and was asked to stop. On checking it was so found that the driver, who on inquiry disclosed his name as Rumail Singh, was carrying two gunny bags containing four cardboard boxes having 12 bottles of country liquor of brand Shimla No.1.One bottle each out of the cardboard boxes was removed and nips as samples were taken from each bottle which were sealed with seal impression 'K'. The bottles and nips were taken into possession vide recovery memo Ext.PW-2/A in the presence of witness Yashpal (PW-2). Rukka Ext.PA was sent to the Police Station Sadar Nahan, H.P., on the basis of which FIR No. 244 of 95 Ext.PB under Section 61(1)(a) of the Punjab Excise Act was registered. Site plan Ext.PC was also prepared and the vehicle was impounded. The sealed samples were sent for chemical examination to the chemical examiner, Kandaghat and vide his report Ext.PF it was so found that the same were containing alcohol. With the

completion of the investigation, challan was presented in the Court for trial.

The accused was charged for an offence under Section 61(1)(a) of the Punjab Excise Act, to which he did not plead guilty. In all prosecution examined five witnesses. The statement of the accused under Section 313 Cr.P.C. was also recorded. The accused took the defence that Yashpal (PW-2) is a stock witness of the police and that he was falsely implicated for the reason that he had altercation with the police at the check post at Kala Amb, H.P which annoyed the police.

The Court below has acquitted the accused for the reason that the prosecution has failed to prove its case beyond reasonable doubt and the statement of the spot witnesses, namely, Yashpal (PW-2) and H.C.Sundan Singh (PW-3) and that of Prem Chand (PW-5) were not only contradictory but also did not inspire confidence.

Yashpal (PW-2) is an independent witness. This witness in his examination has fully supported the case of the prosecution, however, in his cross-examination he has clearly contradicted himself. He has admitted that he is on visiting terms with the police. He has deposed that he was summoned about 15 to 20 minutes after the police had stopped the vehicle. He has admitted that the police had informed him that 2 bottles of alcohol had been recovered from the truck. He has admitted that no bottles were recovered in his presence. He has admitted

that in 5-6 matters pertaining to violation under the excise Act, he has appeared as witness. Even on the date of his examination, he appeared as a witness in another matter. He has admitted that he was not Pardhan of the area at the time of the commission of the offence. He has further deposed that the police did not associate any other independent witness present at the spot.

This witness has categorically admitted that the truck was never searched in his presence and the police had informed him that two bottles of whisky were found from the truck. He appears to be a stock witness. He was not even a member of the police raiding party. Therefore, testimony of this witness cannot be relied upon to prove the guilt of the accused.

H.C.Kundan Singh (PW-3) member of the raiding party, another spot witness has stated that at the time when the vehicle was stopped and searched Yashpal (PW-2) was present. This statement of PW-3 stands contradicted by the statement of PW-2 who has categorically stated that he was called by the police 15-20 minutes after the vehicle had been stopped by the polie who told him that two bottles of whisky were found from the truck. This witness has admitted that he has not brought the case property to the Court and the bottles of sample shown to him in the Court there was no mention of the FIR number. This witness has denied that PW-2 has been appearing as

witnesses in another cases. There are therefore major contradictions in his statement and his version is not reliable.

Version of PW-5 Prem Chand does not inspire confidence for the simple reason that he has stated that PW-2 as member of the raiding party was present along with them at the time when they waited for the vehicle to arrive. According to him the same was also stopped and searched in the presence of PW-2. This is in contradiction with the version of PW-2. This witness has admitted that the place where the vehicle was stopped and searched is situated in thickly populated area. He has admitted that he did not report in his daily diary that he had made inquiries from the general public and requested them to be associated with the investigation as independent witness. He has admitted that no action was taken against such person who had refused to associate themselves. This witness has also admitted that the samples Ext. P1 to Ext.P4 , collected by him and sent for chemical examination did not bear the FIR number. In my view, testimony of this witness does not inspire confidence to prove the guilt of the accused beyond reasonable doubt in the commission of the charged offence.

That apart, it has been admitted by PW-2 that he has appeared on behalf of the prosecution in 5-6 cases which fact is specifically denied by PW-3 and PW-5 who are police officials and incharge of the police station. Further, the case property was not produced in the Court and even the samples do

not find mention the number of the FIR. Why no independent witness has been associated by the police during investigation is not explainable from the record.

For the aforesaid reasons, no interference is called for in the judgment passed by the trial Court. There is no perversity in the appreciation of the material on record by the Court below. The appeal is accordingly dismissed. Bail bonds are discharged.

November 12, 2007 (Sanjay Karol)
TM Judge.